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Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Second periodic reports of States parties due in 2012

Serbia*,**

[10 October 2013]

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Contents

		Paragraphs	*Page*
1.	Introducing a definition of torture to country criminal legislation in accordance with article 1 of the Convention and abolishing the limitations period for criminal offences which include elements of torture	1–3	4
2.	Detainee's access to a physician or attorney-at-law and the possibility for detainees to establish contact with their family	4–9	4
3.	Oversight mechanisms for alleged unlawful acts perpetrated by the police	10	6
4.	Information on allocated human and financial resources for effective operation of the Protector of Citizens (Ombudsman)	11–12	6
5.	Independence of the judiciary	13–21	6
6.	Violence against women	22–27	8
7.	Trafficking in human beings	28–44	10
8.	Setting up the national prevention mechanism	45–46	12
9.	Legal status of asylum seekers	47–49	13
10.	Examination of requests for asylum	50	13
11.	Information on the number of cases of repatriation, extradition and expulsion of asylum seekers	51	13
12.	Information on measures taken to establish an effective mechanism for identification of persons in need of international protection among victims of human trafficking	52	14
13.	Information on the number of reported cases of ill-treatment of asylum seekers at the hands of police officers and on the situation of displaced persons	53–55	14
14.	Extradition requests by other States in relation to individuals suspected of having committed the criminal offence of torture	56	15
15.	Information on steps taken towards concluding an extradition agreement covering war crimes cases	57–58	15
16.	Measures the Republic of Serbia has taken in order to strengthen its cooperation with the International Criminal Tribunal for the Former Yugoslavia	59	15
17.	Information on the content and implementation of the Law on cooperation with the International Criminal Tribunal for the Former Yugoslavia	60	15
18.	Information on measures to make police officers familiar with the provisions of the Convention	61–65	16
19.	Training programmes for judges, prosecutors and medical staff treating detainees and the Istanbul Protocol	66–70	16
20.	Monitoring of hearings conducted and of treatment of persons deprived of liberty	71–73	17
21.	Information on overload of the institutions where persons deprived of liberty are placed	74	18
22.	Data related to reported cases of death on premises for remand in custody	75	18

23.	Information on frequency of violence among inmates	76–77	18
24.	Measures taken to protect the rights of persons deprived of liberty belonging to disadvantaged population categories	78–83	19
25.	Treatment in line with the recommendations of the European Committee for Prevention of Torture on the occasion of its visit to the Republic of Serbia in November 2007	84–105	20
26.	Status of the "Ovčara" case	106–110	24
27.	Statistical data on procedures related to treatment at the hands of the police which contained elements of torture or ill-treatment	111–116	25
28.	Data on cases where individuals who had complained of ill-treatment at the hands of the police when apprehended were subsequently accused by the police of resisting arrest	117	26
29.	Information on the outcome of investigations	118–130	26
30.	Acting upon complaints filed by persons deprived of liberty	131–136	29
31.	Data on the measures of redress for damage sustained by victims of torture, as determined by the courts of the Republic of Serbia	137	30
32.	Right to redress for damage sustained by victims of torture	138–140	30
33.	Redress programs delivered to victims of torture and ill-treatment	141–142	30
34.	Abiding by the principle of inadmissibility of evidence obtained by torture	143	31
35.	Human rights defenders	144–145	31
36.	Death penalty in the criminal legislation of the Republic of Serbia and implementation of the national strategy for protection of children from violence	146–154	32
37.	Use of means of restraint on persons with disabilities	155–161	33
38.	Steps taken to implement the recommendations of the Committee (A/59/44, para. 213 (a) to (t)) addressed to the State party in November 2002, as part of the inquiry procedure provided for in article 20 of the Convention	162	34
39.	Action on the part of Republic of Serbia authorities on individual applications pursuant to article 22 of the Convention	163	34
40.	Measures taken by the Republic of Serbia in order to respond to terrorist threats and the impact of these measures on respect for human rights	164–171	35
41.	New developments in the legal and institutional framework within which human rights are promoted and protected on the national level	172–176	36
42.	Information on new political, administrative and other measures taken to promote and protect human rights on the national level	177	37
43.	Information on measures and activities undertaken in order to implement the Convention and the Committee recommendations since the consideration of the previous periodic report	178–188	37

Annexes***

*** Annexes can be consulted in the files of the secretariat.

1. Introducing a definition of torture to country criminal legislation in accordance with article 1 of the Convention and abolishing the limitations period for criminal offences which include elements of torture

1. Under article 25 of the Republic of Serbia Constitution[1], physical and mental integrity is inviolable. No one may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical or scientific experiments without their freely given consent.

2. Under article 9 of the Criminal Procedure Code (CPC)[2] torture is prohibited. Any use of torture, inhuman and degrading treatment, force, threat, coercion, deception, medical surgery and other means influencing free will or extorting a confession or any other statement or action from the defendant or another participant in the proceedings is prohibited and punishable. Under article 84, evidence obtained contrary to article 16, paragraph 1 of the Code (unlawful evidence) may not be used in criminal proceedings.

3. The Republic of Serbia did not undertake any legislative measures to abolish the statute of limitations for criminal offences which contain torture as their part.

2. Detainee's access to a physician or attorney-at-law and the possibility for detainees to establish contact with their family

(a) Having a medical check-up

4. During remand in custody, a person has the right to request at any time medical help which police officers provide without delay by enabling the first aid service to enter the detention premises. Police officers demand right away that a medical report on medical examination be drawn up and they obtain it at the medical institution where the check-up is done or where the person is received for in-patient treatment.

5. In cases where a person is brought by the police before the investigating judge, such a person, his defence counsel, his family member or his intimate partner (with whom he is having an extra-marital or any other durable relationship) may demand from the investigating judge to order a medical check-up. Such a request may also be made by the public prosecutor. If the request has been made, the investigating judge will determine by his decision which physician will examine the person. The investigating judge will enclose that decision and the minutes on the physician's hearing with the investigation records[3].

6. The Book of house rules on use of the detention measure[4] and the Book of house rules of correctional institutions and district prisons[5] regulate medical check-ups for detainees and convicts upon admission to penal institutions. Under these regulations the detained persons, immediately upon admission to a correctional institution, are examined by a physician who takes note of their state of health; namely, the medical check-up of convicts takes place immediately upon their admission to the institution and no later than within 24 hours. At the convict's request or if health-related problems have been observed,

[1] "Official Gazette of the Republic of Serbia (RS)", No. 98/2006.
[2] "Official Gazette of RS", Nos. 72/2011 and 101/2011.
[3] Art. 228, para. 7 of the Criminal Procedure Code.
[4] "Official Gazette of RS", No. 35/99.
[5] "Official Gazette of RS", No. 72/10.

the check-up takes place without delay. A health file is opened immediately and injuries, if any at admission, as well as injuries which occur later on during imprisonment or detention, are described therein. Upon admission to the institution the staff inform detainees and convicts of their rights, including, among others, of the possibility to have an independent medical check-up. In addition, the Directorate for enforcement of penal sanctions has distributed to all the institutions the above rulebooks, the manual for convicts and the guide for convicts and they are available throughout the (period of) enforcement of the prison sentence.

(b) Free legal aid

7. The suspect must have a defence counsel as soon as the law enforcement authority issues a decision on remand in custody. Unless the suspect retains a counsel by himself, the law enforcement authority will provide him with a defence counsel *ex officio*, assigning the first from the list submitted by the relevant Bar Association. The suspect's hearing will be postponed until after the defence counsel has arrived but by no longer than 8 hours. Unless the counsel's presence has been secured by then, the law enforcement authority will release the suspect or transfer him to the investigating judge without delay. The person deprived of liberty must be turned over to the investigating judge without delay and no later than within 48 hours or else the person will be released. Further, before the first hearing before the investigating judge the suspect has the right to talk with his counsel in private. Free legal aid, i.e. appointing a defence counsel at the expense of the state budget, is guaranteed to all persons deprived of liberty.

8. The suspect's hearing as well as all other police activities in relation to the suspect in the pre-trial procedure, in terms of the right to a defence counsel, take place in line with the provisions of the Criminal Procedure Code (CPC)[6], which govern the issues of obligatory and optional defence in criminal proceedings (arts. 68-76). This means that the suspect may (when appearing) before the police always have a defence counsel if he so wishes. The suspect must have a defence counsel in situations where obligatory defence is stipulated (art. 71, para. 1 of the CPC), and unless the suspect retains one himself, the police has the duty to provide him with a defence counsel *ex officio*. The counsel's presence is mandatory also in cases where the police engage in "interrogation of the suspect" regardless of which offence the suspect has been accused of and of whether requirements for obligatory defence have been fulfilled.

(c) Provision of interpretation services

9. Pursuant to article 4, paragraph 1, subparagraph 1 and subparagraph 7 of the CPC, a person deprived of liberty is instantly advised in his language or in one he understands of the reasons for deprivation of liberty and of the criminal offence he stands accused of as well as of his rights that he may get a translator and interpreter if he does not understand and does not speak the language used in the proceedings.

[6] "Official Gazette of FRY", Nos. 70/2001 and 68/2002, and the "Official Gazette of RS", Nos. 58/2004, 85/2005, 115/2005, 85/2005 – Dr. Zakon, 49/2007, 20/2009 – Dr. Zakon, 72/2009 and 76/2019.

3. Oversight mechanisms for alleged unlawful acts perpetrated by the police

10. Please see the reply to point 6 (Principle of protection from torture) in the replies to the request for additional information addressed by the United Nations Committee against Torture to the Republic of Serbia authorities on the occasion of the review of the Republic of Serbia initial report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the period 1992–2003, which were sent to the Committee in August 2012.

4. Information on allocated human and financial resources for effective operation of the Protector of Citizens (Ombudsman)

11. Under the Law on the Budget of the Republic of Serbia for 2012[7] financial resources in the total amount of RSD 162,839,000.00 have been allocated for the Ombudsman.

12. On 31 December 2011 the Ombudsman's Technical Service had 69 staff. There were 49 civil servants and employees with indefinite term contracts and 20 under fixed term contracts. Of the total number of staff, 55 held university degrees and 14 secondary school qualifications. The technical service had a staff of 50 women and 19 men[8].

5. Independence of the judiciary

13. Under the Republic of Serbia Constitution and under the Law on the High Council of the Judiciary[9], the High Council of the Judiciary is an independent and self-standing body which secures and guarantees the independence and autonomy of the courts and judges. The High Council of the Judiciary took the Decision determining the criteria and standards for assessment of school qualifications, professional competence and worthiness for appointment of judges and court presidents[10], defining the criteria and standards for the first (judicial) appointment with a three-year term-in-office, appointment of a judge with permanent tenure upon expiry of this three-year term, appointment of a judge with a higher instance court, appointment of the court president and appointment with permanent tenure of the judge who was appointed under earlier regulations and (still) performing judicial duties at the time of appointment. As for the appointment of judges and termination of judicial office, the High Council of the Judiciary appoints judges to perform judicial duties on a durable basis, decides on termination of judicial office and nominates candidates before the National Assembly for their first-time appointment as judges.

14. Under the Law on Organisation of the Courts[11] the Minister in charge of justice issues the Court's Rules of Procedure, having obtained an opinion thereon from the Supreme Court President beforehand. The Court's Rules of Procedure[12] lay down the internal set-up and proceedings of the courts in the Republic of Serbia. Implementation of

[7] "Official Gazette of RS", No. 101/2011.

[8] Statistical data on the number and types of complaints received by the Protector of Citizens' Office as well as the outcome of the complaints of torture and bad treatment are given in Annex No. 1 to this report.

[9] "Official Gazette of the RS", Nos. 116/2008, 101/2010 and 88/2011.

[10] "Official Gazette of RS", No. 149/2009.

[11] "Official Gazette of RS", Nos. 116/2008, 104/2009, 101/2010, 3/2011, 78/2011 and 101/2011.

[12] "Official Gazette of RS", Nos. 110/2009 and 70/2011.

the Court's Rules of Procedure ensures proper and timely performance of duties by the court administration and of other duties of relevance to internal organisation and work of the court. As for the independence of the disciplinary body, the Law on Judges[13] stipulates that the disciplinary bodies are the Disciplinary Prosecutor and his Deputies and the Disciplinary Commission. The members of the disciplinary bodies are appointed by the High Council of the Judiciary. On 24 September 2010 the High Council of the Judiciary adopted the Rulebook on disciplinary procedure and disciplinary liability of judges[14], which regulates the procedure to establish the judges' disciplinary liability for disciplinary misdemeanors; imposing of disciplinary sanctions; setting up of disciplinary bodies; and their working methods. The High Council of the Judiciary appointed the Disciplinary Prosecutor and his Deputies as well as members of the Disciplinary Commission and their Deputies.

15. Appointment of Public Prosecutors and Public Deputy Prosecutors takes place in accordance with the Law on Public Prosecutor's Office[15] and the State Prosecutorial Council's Rules of Procedure[16].

16. The State Prosecutorial Council has 11 members, of whom 6 public prosecutors or deputy public prosecutors holding permanent tenure are its elected members; among them, at least one comes from the territory of the autonomous provinces and two are respectable and prominent jurists with at least 15 years of professional experience, one an attorney-at-law and the other a Law School Professor.

17. The Republic Public Prosecutor is, by his rank, President of the State Prosecutorial Council and is the seventh member of the Council directly from the ranks of public prosecutors and their deputies, of a total of 11 members of the Council.

18. The State Prosecutorial Council publishes an announcement for appointment of public prosecutors and deputy public prosecutors. Then a separate appointment commission is set up and it forwards proper and complete applications to the Council for further action. The Council gathers data and opinions on school qualifications, professional competence and worthiness of each candidate and may decide, before it takes its decision, to have an interview with the candidates and then make its motion for appointment of Public Prosecutor and the first-time Public Deputy Prosecutor and a decision on appointment of Deputy Public Prosecutor.

19. In addition to the other responsibilities the State Prosecutorial Council is entrusted with under the Republic of Serbia Constitution and the Law on the State Prosecutorial Council as well as pursuant to other laws and regulations, the State Prosecutorial Council also draws up a list of candidates for appointment as Republic Public Prosecutor, which it then forwards to the Government; nominates before the National Assembly candidates for first-time Deputy Public Prosecutor and appoints public deputy prosecutors to hold permanent tenure as public deputy prosecutors. The Council decides on every individual appointment separately, by majority of votes of all its members.

20. The permanent members of the State Prosecutorial Council reviewed the decisions of the first State Prosecutorial Council on termination of duties of public prosecutors and deputy public prosecutors, in accordance with the Rulebook on procedure for review of the

[13] "Official Gazette of RS", Nos. 116/2008, 58/2009 – decision of the Constitutional Court, 104/2009; 101/2010 and 8/2012 – decision of the Constitutional Court.

[14] "Official Gazette of RS", No. 71/2010.

[15] "Official Gazette of RS", Nos. 116/2008, 104/2009, 101/2010, 78/2011 – Dr. Zakon, 101/2011 and 38/2012 – decision of the Constitutional Court.

[16] "Official Gazette of RS", No. 55/2009.

decisions of the first State Prosecutorial Council, and implementation of the criteria and standards for assessment of school qualifications, professional competence and worthiness; members of this first State Prosecutorial Council, however, had not taken part in the review procedure. The Rulebook on review was adopted with the approval of the Association of Prosecutors and Deputy Public Prosecutors of Serbia, a professional non-governmental association, as well as with the approval of the representatives of international community organisations, notably the European Commission, the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE). The Procedure was implemented with observers taking part both from the professional association and representatives of the European Union, OSCE, Council of Europe, and the US Department of Justice. Since then, in a period of less than two years, the following were adopted: the Rules of Procedure of the State Prosecutorial Council; the Rulebook on review procedure in relation to decisions reached by the first State Prosecutorial Council and on the criteria and standards applicable in assessing qualifications, professional competence and worthiness; the Decision on review procedure in relation to decisions reached by the first State Prosecutorial Council; the Decision on the number of deputy public prosecutors; the Rules of Procedure of the State Prosecutorial Council; the Decision on the setting up of the Administrative Office and its activities; the Rulebook on the criteria and standards for assessment of qualifications, professional competence and worthiness of candidates for the office of public prosecutor; the Rulebook on the activities of the State Prosecutorial Council Appointments Commission; and the Rulebook amending the Rulebook on the activities of the State Prosecutorial Council Appointments Commission.

21. The Rulebook on disciplinary procedure and disciplinary liability of public prosecutors and deputy public prosecutors stipulates that the following disciplinary bodies are to be set up: Disciplinary Prosecutor and his deputy as well as a disciplinary commission as a body at first-instance, which will reach decisions on disciplinary bills submitted by the Disciplinary Prosecutor. The State Prosecutorial Council is envisaged as a second-instance disciplinary body and the Rulebook also provides for judicial protection.

6. Violence against women

22. The Family Law[17] defines domestic violence and stipulates that a dispute for protection from domestic violence must be handled under a particularly urgent procedure by scheduling the first hearing within 8 days of the receipt of the complaint by the court, and (requiring of) the second-instance court to reach a decision within 15 days from the (date of) delivery of the relevant complaint. The Court may impose a protective measure against domestic violence (even if such) has not been demanded, if it ascertains that a measure of this kind will be the best way of achieving protection, e.g. a provisional prohibition of contacts and communications between male and female family members.

23. The Criminal Code regulates the length of sentence for perpetrators of domestic violence and criminalises threats, assaults against personal integrity, placing family members in danger, causing and inflicting injuries, and homicide. The Criminal Procedure Code stipulates, in relation to domestic violence, the following: trial within a reasonable time; hearing of the vulnerable witness categories (including victims of violence); testimony by forensic experts in psychology; as well as measures to ensure the presence of the accused for unhindered conduct of criminal proceedings, among other things, a restraining order, prohibition of meeting or communications with certain persons (victims of violence, witnesses, etc.), home confinement, and also a detention. In 2009 the Republic

[17] "Official Gazette of RS", No. 18/05.

of Serbia adopted the Law on Gender Equality[18], under which, inter alia, all family members have an equal right to protection from domestic violence.

24. In April 2011 the Government adopted the National Strategy for Prevention and Suppression of Violence against Women in the Family and in Intimate Relationships[19], taking as its proceeding points the recommendations of the UN Committee on Elimination of Discrimination against Women and the results of the work done by the Council of Europe (CoE) Preparatory Committee for the elaboration of a convention on preventing and combating violence against women and domestic violence. In line with the mentioned Strategy, the Republic of Serbia signed in 2012 the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence.

25. In November 2011 the Government adopted the General Protocol on action and cooperation of the institutions, bodies and organisations in situations of violence (perpetrated) against women in family and in intimate relationships. The Protocol represents a fast and efficient response by the Republic of Serbia to (the need for) protection of women – victims of violence in a complete and organised way. This document regulates cooperation among the institutions belonging to different systems responsible for protection of victims of violence: social welfare, the judiciary, police and the health care system. The purpose of this document is to ensure completely and comprehensively that every institution may act within its powers and duties under the law in order to provide the victim of violence with long-term and sustainable welfare protection and create conditions for an appropriate penalty under the law to be imposed on the violent perpetrator. The Ministries, which in their procedure have the responsibility of preventing and combating domestic violence, created and adopted specific protocols of procedure of its employees in these cases. By the Special protocol on the conduct of police officers in cases of violence against women in the family and intimate relationships, special emphasis is placed on the safety of the victim, regardless of their willingness to testify on the same violence, as well as in dealing adequately and protecting human rights.

26. Since 2009 the Gender Equality Directorate has been implementing the project Combating Sexual and Gender-Based Violence, supported by the United Nations Development Programme (UNDP) and the Kingdom of Norway. Thus far, a number of activities have been carried out contributing to capacity building at the Gender Equality Directorate for shaping of public policies and their implementation and monitoring, and developing specialised teaching modules in the area of gender equality and sexual and gender-based violence for the Judicial Academy, the Police Academy and the Government's Human Resources Management Service.

27. Further, a study was elaborated (titled): "Mapping of domestic violence against women", based on a survey done to enable representative data (to be presented) on geographical distribution and main features of domestic violence against women in Central Serbia[20].

[18] "Official Gazette of RS", No. 104/09.

[19] "Official Gazette of RS", No. 27/11.

[20] Statistical data on criminal offences in relation to violence against women are given in Annex No. 2 of this report.

7. Trafficking in human beings[21]

(a) Laws and measures to prevent and suppress human trafficking

28. The Republic of Serbia National Assembly voted on 31 August 2009 in favour of (adoption of the) amendments to the Criminal Code (CC)[22]. Novelties in relation to article 388–Human trafficking mainly have to do with increasing the length of the stipulated sentence term: the penalty for the basic form of this offence is now a term of 3-12 years in prison, and the minimum penalty for trafficking in children, instead of 3 years in prison applicable until now, is 5 years in prison. There is also a longer sentence applicable now if the offence is committed by an organised criminal group; (and) a penalty (to be imposed) on the (trafficked person's) service users if they have known or could have known that they were (dealing) with a victim of human trafficking.

29. It is further stipulated that users of services provided by victims of trafficking will be punished by a term in prison, a provision in line with the CoE Convention on Action against Trafficking in Human Beings, which the Republic of Serbia ratified on 18 March 2009. Also adopted were amendments to the designation in article 389 of the CC, which now reads as follows: "Trafficking in minors for purpose of adoption"; this way the age limit is raised and minors protected from all forms of exploitation and trafficking.

30. The Ministry of Justice in March 2011 also developed a Special Protocol on action by judicial authorities to protect victims of human trafficking which includes specific instructions for judges and prosecutors on how to proceed in such cases.

(b) Access to legal remedies and to redress

31. Pursuant to the provisions of the CPC, the injured party, the victim, their successors and proxies may submit a claim for redress for the damage caused when the criminal offence was committed. Such a claim may be submitted before the end of the main hearing to the adjudicating court and it will reach its decision in criminal proceedings, unless this would make the proceedings last significantly longer. If hearing of the said claim and ruling on it would makes the criminal proceedings last significantly longer, the court will advise the person (concerned) to institute civil law proceedings in order to implement his right to award of damages.

(c) Recovery services and programs and social integrations[23]

32. With the passage of its Regulation on network of social welfare institutions[24], the Government established on 13 April 2012 the Welfare Center for victims of human trafficking. The Center was established as a social welfare institution, performs duties related to assessment of status, needs, strengths and risks of victims of human trafficking; carries out identification duties; and provides adequate assistance and support to victims of human trafficking with a view to their recovery and reintegration. To that effect, the Center coordinates the activities for delivery of social welfare services to victims of trafficking, cooperates with social work centers, residential institutions for beneficiaries, other bodies, services and organisations, all with a view to ensuring the best interest and safety of victims of trafficking. Under its Founding Act and Rulebook on internal organisational structure

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[21] Statistical data on criminal offences in relation to trafficking in human beings women are given in Annex No. 3 of this report.

[22] "Official Gazette of RS", No. 72/09.

[23] Statistical data on recovery services and programmes delivered to victims of human trafficking are given in Annex No. 4 to this Report.

[24] "Official Gazette of RS", No. 16/2012.

and duties and tasks scheme, the Center is to pursue its activity within two organisational units, notably the Welfare Coordination Service for victims of trafficking and the Reception Center for victims of trafficking.

33. At the Ministry of Internal Affairs (MoIA) training is delivered on combating human trafficking as a separate topic in the human rights field on three levels: Basic police training module; Module for professional development of police officers; and Module for specialised training of police officers who perform the duties (in combating human trafficking) in line with the duties and tasks scheme.

34. The Ministry of Labour and Social Policy participated in 2011 in the Joint Programme – of the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the United Nations Office on Drugs and Crime – for combating human trafficking in Serbia. Under this project, shelters for victims of human trafficking were opened in Novi Sad and in Niš, notably within the Novi Sad Municipal social work center and within the safe home for women in Niš.

(d) Execution of the Action Plan for combating human trafficking 2009–2011

35. The National Action Plan was adopted on 30 April 2009 and represents an example of good practice and unique cooperation (among governments, non-governmental and international organisations) in the region.

36. In order to make operational the National Action Plan for combating human trafficking for the period 2009–2011 (hereinafter referred to as the NAP), amid the global economic crisis and shortage of funds for effective execution of the NAP, the joint anti-human trafficking programme "UN.GIFT Serbia" was launched and implemented by the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration and the United Nations Office on Drugs and Crime in Serbia, under the auspices of the Global Initiative to Fight Human Trafficking, in cooperation with the Government of the Republic of Serbia.

37. The Joint Programme (JP) for combating human trafficking is the first joint initiative of the United Nations agencies in the field of combating human trafficking in Serbia. The JP's overall aim is to make the NAP operational by (fulfilling) four main objectives: 1) national capacity-building for execution of the NAP and improved coordination within the National referral mechanism; 2) creation of a sustainable framework for systematic prevention of human trafficking among particularly disadvantaged groups; 3) capacity-building in the judiciary and police in order to upgrade investigations, trials and court judgments in cases of human trafficking; 4) enhanced welfare and (re)integration mechanisms for potential and existing victims of human trafficking (children and adults), including those identified under asylum granting procedures.

38. The JP implementing partners are the MoIA (the main partner); the Ministry of Justice and Public Administration; the Ministry of Labour, Employment and Social Policy; the Commissariat for Refugees; civil society organisations; and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

39. The MoIA started developing a new strategy under the working title "National Strategy for prevention and suppression of human trafficking and for protection of victims in the Republic of Serbia", which is to replace the previous Strategy for combating human trafficking of 2006. The reason for making a new strategy is to align the national legislation with the EU *acquis*, strengthen the national referral mechanism and (provide) better protection to victims of human trafficking as well as to fine-tune the Republic of Serbia's strategic response to the problem of human trafficking, taking into account the changing nature of this phenomenon. The plan is to time limit the new strategy to 5 years, from 2013

to 2018, and in parallel also to develop an accompanying National Action Plan for 2013-2014.

(e) Activities of the Welfare Coordination Service for victims of trafficking

40. The Welfare Coordination Service for victims of trafficking was established at the Child and Youth Corrective Training Institute, Belgrade (Zavod za vaspitanje dece i omladine, Beograd) in December 2003 and resulted from a joint project of the Ministry of Labour, Employment and Social Policy and the OSCE Mission to Serbia and Montenegro. It commenced its activities in March 2004, since 1 June 2005 has been integrated into the social welfare system and is now under the wing of the Ministry of Labour, Employment and Social Policy.

41. The Welfare Coordination Service assisted over the past 3 years in the identification, coordination, dissemination of information on the rights and in the referral of 244 victims of trafficking as well as of 60 potential victims to direct service providers. This data relates to 2009, 2010 and 2011. In early 2012 the Service identified 12 victims and worked with 9 potential victims of human trafficking as well.

42. In the period mentioned above the Service cooperated with the police, prosecution offices, courts, international organisations and civil society organisations seeking to make a good assessment and activity plan in providing help to every assisted victim. As for victims of human trafficking who are foreign nationals, the Welfare Coordination Service established contacts with the Embassies of the country of origin; assisted them in obtaining *laissez-passer* travel documents (if they lacked a passport); submitted applications for residence (on) humanitarian (grounds); made arrangements for repatriation; established contact with organisations in the country of origin which will assist in helping the victim upon repatriation. As for victims who were under age, either nationals (of Serbia) or foreign (nationals), in rendering assistance the Service invariably involved the competent social work center in the process. If the case in point involved victims who were under age and not accompanied by a parent, the competent social work center designated a provisional guardian until the child's return to his or her family of origin or until his or her placement in an institution or with a foster family.

43. The Welfare Center for victims of human trafficking includes a reception center for emergency accommodation of victims of human trafficking which started its activities in April 2012. Acting as part of this Center is the existing Welfare Coordination Service for victims of trafficking. The Service introduces the victim to the assistance and welfare regime and coordinates (efforts to) design the best assistance plan on the principles of voluntariness, informed consent and the best interest of the victim.

(f) Signing of bilateral and subregional agreements with the relevant countries on prevention and suppression of human trafficking

44. Since 2008 the Republic of Serbia has not concluded bilateral nor regional agreements relating to prevention and suppression of human trafficking.

8. Setting up the national prevention mechanism

45. With the passage of the Law supplementing the Law on ratification of the Optional Protocol to the CAT[25], which the Republic of Serbia National Assembly adopted on 28 July

[25] "Official Gazette of RS – International treaties", No. 7/2011.

2011, the National Mechanism for Prevention of Torture was set up in the Republic of Serbia.

46. This law stipulates that the duties of the national prevention mechanism (NPM) are to be performed by the Ombudsman. In performing the NPM duties the Ombudsman collaborates with the Ombudspersons from the autonomous provinces and with the associations whose aim, as provided for by their articles of association, is to promote and protect human rights and liberties.

9. Legal status of asylum seekers

47. Since the Asylum Law[26] started to be implemented, a total of 5 subsidiary protections have been granted (Iraq – 1; Somalia – 1; and Ethiopia – 3). So far refugee status has not been granted to anyone.

48. A decision of the Asylum Division, as a body responsible for first-instance proceedings, may be appealed against with the Asylum Commission (independent administrative collegiate body ruling in second-instance proceedings). A complaint may be filed against any decision reached by the Asylum Commission with the Administrative Court, which provides also for judicial protection of the relevant asylum seeker's rights. Proceedings end when the Administrative Court has reached its decision.

49. In 2011 there were 49 appeals against the Asylum Division's decisions (25 were dismissed; 10 were upheld; 14 still under procedure) and 11 complaints against the decisions of the Asylum Commission (7 were rejected; proceedings on 4 still on-going).

10. Examination of requests for asylum

50. The Law on Asylum does not provide for an emergency procedure, instead regular procedure is followed in all cases. However, the Law on Asylum recognised both concepts as such and they are in use but on completion of the regular procedure and subject to assessment of all the facts of relevance for decision-making.

11. Information on the number of cases of repatriation, extradition and expulsion of asylum seekers

51. Data on the number of measures undertaken in relation to foreign nationals, i.e. number of criminal and misdemeanor complaints filed and measures imposed to cancel residence, from 2009 to 31 September 2012, are given below:

Year	*2009*	*2010*	*2011*	*2012*
Criminal complaints	1,216	1,172	968	641
Misdemeanor complaints	9,788	11,764	13,026	10,067
Residence permit revoked	1,492	2,482	7,126	5,564
Total	**12,496**	**15,418**	**21,120**	**16,875**

[26] "Official Gazette of RS", No. 109/2007.

12. Information on measures taken to establish an effective mechanism for identification of persons in need of international protection among victims of human trafficking

52. In order to organise joint campaigns and other activities, reduce risk factors and vulnerability to the problem, raise public awareness of the problem of human trafficking as a form of modern-day slavery, promote statistical monitoring of this occurrence and improve national response to human trafficking, assistance and welfare, improve the legal framework for combating human trafficking, prevent secondary victimisation of victims/witnesses at the hands of the authorities and recognise this problem in a timely manner, an Agreement on Cooperation in the field of combatting human trafficking was signed by the Ministry of Internal Affairs, Ministry of Finance, Ministry of Labour and Social Policy, Ministry of Health, Ministry of Justice and Ministry of Education. The contracting parties undertook to engage in special and direct cooperation in developing a national mechanism for identification, assistance and protection of victims of human trafficking, in line with the Strategy for Combating Human Trafficking in the Republic of Serbia.

13. Information on the number of reported cases of ill-treatment of asylum seekers at the hands of police officers and on the situation of displaced persons

53. The Asylum Division is not familiar with any cases of ill-treatment of asylum seekers at the hands of police officers.

54. There were 14 collective centers closed down in 2011, and 9 during 2012 and all the refugees and internally displaced persons (IDPs) who had been placed in these centers were provided with adequate solutions in line with their needs. Currently there are 30 collective centers (still operating) in the Republic of Serbia, 11 of which are in Kosovo-Metohija housing 2,646 persons, notably 490 refugees and 2,156 internally displaced persons (IDPs). Persons at collective centers are provided with housing and meals by the Commissariat for Refugees. According to the plan, collective centers are to be gradually closed down as the funds for implementation of the projects which accompany the closures of collective centers are made available.

55. In order to improve the living conditions of the IDP population and provide adequate housing solutions, the Commissariat for Refugees designed appropriate housing provision programs in cooperation with the Ministry of Labour, Employment and Social Policy. The current programs are intended for all beneficiaries living in inappropriate conditions, including persons at recognised and non-recognised collective centers. Currently, the following is available to IDPs: programs for buy-off of homes with a garden; the program for donation of pre-fabricated houses, a particularly suitable housing solution for people living in informal settlements; donation of packages with construction materials to finish off a started house or adapt a sub-standard house; and granting of tenure over social housing apartments under protected conditions to persons unable to function without additional forms of support. According to the data of the Commissariat for Refugees and Migration, there are some 1,400 IDPs living in what are known as unrecognised collective centers (there are 40 such centers in the territory of the Republic of Serbia). Structures into which IDPs have moved on their own initiative are deemed to be unrecognised collective centers.

14. Extradition requests by other States in relation to individuals suspected of having committed the criminal offence of torture

56. Since 2008 the Republic of Serbia has not received any extradition requests from another State in relation to this criminal offence.

15. Information on steps taken towards concluding an extradition agreement covering war crimes cases

57. The Republic of Serbia has a treaty in place which was signed with the Republic of Montenegro on extradition of own nationals for crimes against humanity and other values protected under international law which also include war crimes.

58. Every extradition treaty concluded by the Republic of Serbia, as well as certain international conventions on extradition, allows for extradition for war crimes but only of foreign nationals.

16. Measures the Republic of Serbia has taken in order to strengthen its cooperation with the International Criminal Tribunal for the Former Yugoslavia

59. Please see the reply to point 11 (Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY)) in the replies to the request for additional information the Committee against Torture addressed to the authorities of the Republic of Serbia on the occasion of review of the Republic of Serbia initial report on implementation of the Convention against Torture for the period 1992-2003, which were sent to the Committee in August 2012.

17. Information on the content and implementation of the Law on cooperation with the International Criminal Tribunal for the Former Yugoslavia

60. The Law on Cooperation with the ICTY[27] settled all the issues of participation and relations between the Republic of Serbia and the Tribunal, such as representation before that Tribunal; relation to the criminal codes and regulations of the Republic of Serbia; criminal complaints and bodies responsible for their receipt and processing; deprivation of liberty; detention and turning over of persons; as well as enforcement of the ICTY judgments. In support of the Tribunal's activities, the Republic of Serbia concluded with the Tribunal in January 2011, as the first country from the region (to do so), the Agreement on enforcement of penal sanctions imposed by the ICTY.

[27] "Official Gazette of RS", No. 72/09.

18. Information on measures to make police officers familiar with the provisions of the Convention

61. Following the Module for professional development of police officers with the MoIA, which is issued by the Minister, in 2010/2011 a total of 25 one-day seminars were realised at the area police directorates on the topic "Prohibition of Torture in the Police" for police officers.

62. The MoIA organised during 2010, in cooperation with the OSCE Mission to Serbia, a workshop titled "Safer conditions of stay and treatment of persons deprived of liberty in premises for remand in custody" for police officers at the Ministry and for the officers (responsible) for cooperation with the MoIA Commission monitoring the implementation of the European Convention on Prevention of Torture, Inhuman or Degrading Punishment or Treatment. Training was realised by police experts from Great Britain.

63. In the follow up to the professional trainings for police officers in the sector of raising accountability in policing, the MoIA organised in 2011, in cooperation with the OSCE Mission to Serbia and the civil society organisation "Belgrade Human Rights Center", a workshop titled "Prohibition of ill-treatment and treatment of persons deprived of liberty during their remand in police custody" for the 27 officers designated by their respective area police directorates as Contact Points with the MoIA Commission monitoring the implementation of the European Convention for Prevention of Torture, Inhuman or Degrading Punishment or Treatment.

64. The aim of the workshop was to enable participants to acquire knowledge about the most important international standards relating to prohibition of torture and inhuman or degrading treatment or punishment, and especially about the standards stemming from the case law of the European Court of Human Rights (ECHR) (what is permitted when an arrest is made; stipulated police interrogation techniques and police treatment protocols in cases of torture; health care during remand in police custody; treatment of persons with mental disorders, etc.). In addition, participants had an opportunity to also get familiar with the state's obligations to undertake an effective investigation in relation to complaints of torture; with the proceedings against the Republic of Serbia before the ECHR and Committee against Torture; as well as with the relevant ECHR case law on the use of force (when use of firearms is allowed; the policeman's discretionary power to decide whether to use means of coercion and which of them).

65. The Commission monitoring the implementation of the European Convention for Prevention of Torture and Other Inhuman or Degrading Punishment or Treatment developed a manual for police officers "Prohibition of torture in international instruments" and "Collection of recommendations by international bodies addressed to the Republic of Serbia in the field of human rights protection and prevention of torture", which, in line with the Module for professional development of police officers with the MoIA, were introduced as supplementary education materials for police officers at the Ministry in thematic fields relating to human rights protection and prevention of torture.

19. Training programmes for judges, prosecutors and medical staff treating detainees and the Istanbul Protocol

66. The Ministry of Justice and Public Administration implements, through the Judicial Academy, the training programme (professional development) for holders of judicial office, i.e. judges and prosecutors, on the European Convention for the Protection of Human Rights and Fundamental Freedoms and on the relevant core international human rights treaties.

67. Special training within the Directorate for enforcement of penal sanctions is implemented in the context of particular challenges facing physicians in prisons and relates to spotting possible torture and inhuman treatment of persons deprived of liberty. Health professionals are required to put on record any observed aberrations in the health file and inform the prison warden thereof forthwith.

68. The staff in health institutions were made familiar with the CAT and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or punishment, also known as the Istanbul Protocol. For that purpose, a training was organised in the Republic of Serbia in 2007 with judges, prosecutors, attorneys-at-law, physicians attending and foreign educators taking part.

Trainings in line with the Istanbul Protocol

69. In the period January 2006-April 2009, the civil society organisation "IAN-International Assistance Network" was involved in implementation of the international project "Prevention through documentation – Project for implementation of the Istanbul Protocol", in the capacity of National Focal Point for the Republic of Serbia. The project was realised under the leadership of the International Rehabilitation Council for Torture Victims.

70. The aim of the project was to make professional circles familiar with and train them on application of the principles set out in the Istanbul Protocol, in order to help victims in the rehabilitation and repatriation process and prevent new cases of torture.

20. Monitoring of hearings conducted and of treatment of persons deprived of liberty

71. Following the recommendation by the CoE Committee for Prevention of Torture relating to the duty of the MoIA to prepare a form clearly setting out the fundamental rights of persons deprived of liberty by the police and to ensure that this form is handed over to a deprived person in his native language at the moment when he is deprived of liberty or when remand in custody is ordered, the Commission monitoring the implementation of the European Convention for prevention of torture and inhuman or degrading treatment or punishment developed the following forms: "Rights of a person deprived of liberty"; "Rights of a person remanded in custody"; "Rights of a minor deprived of liberty"; "Rights of a minor in his capacity as citizen"; and "Rights of a minor in his capacity as suspect". The forms were produced in order to make (persons) familiar with their fundamental rights, in keeping with the provisions of the Law on juvenile delinquents and the criminal law protection of minors; the CPC; and the Law on the Police, which have been implemented effectively in the Ministry's practice. The mentioned (forms) were also posted on the website of the MoIA on the Internet.

72. Monitoring of correctional institutions is carried out by the Directorate for enforcement of penal sanctions (esp. the Monitoring Section), as internal oversight, and externally by the Ombudsman, the Provincial Ombudsman, the (National) Assembly Commission for oversight of enforcement of penal sanctions as well as by numerous civil society organisations. Enforcement of detention measures is monitored by the President of the higher court having jurisdiction over the seat of the institution concerned. Pursuant to article 152 of the CPC, the President of the court, or a judge he has designated, is duty-bound to visit detainees at least once a week and, if he deems it necessary, get informed, even without the supervisor or guard being present, about how the detainees are fed, how they meet their other needs and how they are treated. The President or the judge he has designated is required to notify, without delay, the Ministry in charge of justice of any

shortcomings noticed during the visit and the Ministry is required to inform the President of the court or the judge (concerned), within 15 days of the receipt of the notice, of the measures undertaken to remove (such shortcomings).

73. By ratifying international human rights conventions the Republic of Serbia undertook the commitment to ensure that all international organisations established in order to oversee implementation of these conventions have the right to visit correctional institutions unhindered and without prior notice. In addition, the National Prevention Mechanism and the (National) Assembly Commission for oversight of enforcement of penal sanctions have the right, under national legislation, to visit correctional institutions without prior notice.

21. Information on overload of the institutions where persons deprived of liberty are placed

74. Numerical data on persons deprived of liberty placed in the Republic of Serbia institutions are given in annex No. 5 to this report.

22. Data related to reported cases of death on premises for remand in custody[28]

75. Every person who dies in an institution for enforcement of penal sanctions, regardless of the cause of death, is sent, on the order of the investigating judge, to the competent institute of forensic medicine to have the cause of his death established. Upon a medical forensic autopsy, the Institute of Forensic Medicine sends an autopsy report with its conclusions on the cause of death to the competent investigating judge. In case there are grounds for suspicion that the person's death occurred as a result of commission of criminal offences, the competent court will conduct proceedings in the line of duty.

23. Information on frequency of violence among inmates[29]

76. The Law on enforcement of penal sanctions (LEPS)[30] governs, in particular, the treatment of persons deprived of liberty, their rights and rights protection mechanisms, brought into line with international standards in this field.

77. Activities of correctional institutions are subject to oversight, which also entails oversight of treatment of persons deprived of liberty, by the organisational unit, within the Directorate for enforcement of penal sanctions, responsible for monitoring[31]; by the (National) Assembly Commission for oversight of enforcement of penal sanctions; by the National Preventive Mechanism; as well as by civil society organisations engaged in protection of rights of persons deprived of liberty.

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[28] Statistical data in relation to reported death cases in remand premises/detention and information on findings of concrete investigations into particular death cases are given in Annex No. 6 to this Report.

[29] Numerical data on violence among persons deprived of liberty are given in Annex No. 7 to this Report.

[30] "Official Gazette of RS", Nos. 85/05, 72/09 and 31/11.

[31] This monitoring covers status and protection of rights of persons deprived of liberty – art. 270, para. 3, sub-para. 1 of the Law on enforcement of penal sanctions (LEPS).

24. Measures taken to protect the rights of persons deprived of liberty belonging to disadvantaged population categories

78. In the system for enforcement of penal sanctions in the Republic of Serbia there is particular attention given to women and minors. When a detention measure is to be applied, detained women and detained minors are placed separately from other detainees. As for imprisonment sentence, convicted women in the Republic of Serbia serve such terms in only one institution – the Correctional institution for women in Požarevac. For minors, there are separate institutions as well. Juveniles serve prison sentences in the Correctional institution for juveniles in Valjevo, whereas the measure of referral to a reformatory is implemented in the Reformatory in Kruševac. These institutions also run specialised and individualised treatment programs. New buildings have been constructed for placement of juveniles at the Reformatory in Kruševac; this was financed by the EU Instrument for Pre-Accession Assistance (IPA) Fund in the amount of EUR 3,000,000 and beneficiaries are expected to move in by end of the second quarter in 2013. Further, in December 2012, the Government of the Kingdom of Norway approved a grant(-based) project for reconstruction of the Correctional institution for juveniles in Valjevo, so that, according to plan, by end of the third quarter in 2013 works will start to reconstruct the facilities for placement of convicts and to build a new facility in line with international standards.

79. The system of penal sanctions of the Republic of Serbia also includes, among other, the security measure of mandatory psychiatric treatment and custody in a health care institution, which is imposed on any perpetrator who has committed an offence in a state of "significantly reduced sanity" if the court finds, in light of the criminal offence committed and the state of mental derangement (of the perpetrator), that there is a serious threat that he may commit an even more serious crime and that, in order to eliminate such threat, his treatment in such an institution is necessary. The mentioned security measure, for the entire territory of the Republic of Serbia, is implemented in a special institution – Special Prison Hospital in Belgrade. Since the mentioned institution also implements other security measures – (providing) mandatory treatment of alcohol addicts and mandatory treatment of drug addicts, as well as medical treatment of other convicts and detainees, the persons subjected to the security measure of mandatory psychiatric treatment and custody in a health care institution are placed at a special ward which is both physically separate and an organisational unit in its own right separated from the other institution wards.

80. In addition to treatment, the above mentioned persons are also provided with special occupational therapy programs, various types of workshops (depending on the nature of their disability and the assessed needs and capacities). Convicts suffering from mental diseases and serving terms in prison are provided with medical treatment in the institutions. Every institution must make available the services of a specialist in psychiatry.

81. In order to make persons deprived of liberty belonging to national minorities more familiar with their rights and duties during their term in prison and with a way to implement and protect their rights, the following were translated into the Romany language and other minority languages: Book of house rules of correctional institutions and district prisons; Rulebook on treatment, treatment program, place allotment and subsequent place allotment; as well as the Manual for convicts; and the Guide for convicts to the reception department.

82. In relation to child welfare and use of the child's right to protection from torture and unlawful or arbitrary deprivation of liberty, under article 66 of the Law on juvenile delinquents and criminal law protection of minors, the juvenile judge may reach a decision to have the minor, during preparatory procedure, placed provisionally in the emergency reception center, a corrective training institution or a similar one, be placed in custody of a guardianship agency or be placed with another family, if necessary, in order to isolate the

minor from his earlier living environment or provide assistance, monitoring, welfare protection or accommodation to the minor.

Number of minors with closed-door protection measure imposed (decision reached or main hearing over and measure imposed), according to the records of the social work centers (SWCs)

Type of measure	*2009*	*2010*
Referral to a corrective training institution	67	53
Referral to the Reformatory (Kruševac)	150	165
Referral to a special institution for medical treatment and skills development	25	10
Juvenile prison (Valjevo)	42	31
Total number of minors	**284**	**259**
Number of minors with a detention measure imposed during 2010, according to the records of the SWCs		160

Source: Republic Social Welfare Institute.

83. Under the Law on the Police[32], the police who exercise powers in relation to minors, younger adults and in cases involving criminal law protection of children and minors, are authorised police officers who are specially trained for work with minors. Police powers are applied to a minor in the presence of a parent or guardian or, in case they are not available, in the presence of the representative of the guardianship agency, except when this is impossible due to special circumstances or urgent (need for) action.

25. Treatment in line with the recommendations of the European Committee for the Prevention of Torture on the occasion of its visit to the Republic of Serbia in November 2007

(a) Removing "non-standard items" from police premises

84. The MoIA Commission monitoring the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment pays regular visits, as part of its responsibility, to the premises of the area police directorates and their organisational units, serving the purpose of (having) interviews with persons, all with a view to locating "non-standard items". It also directly inspects visually the facilities and places where they are disposed of and stored. Following the recommendation of the CoE Committee for the Prevention of Torture, the Commission orders, on the spot, that all items originating from criminal offences must be labelled and stored as provided for under the law.

(b) Reducing the overload of prison cells

85. To settle the problem of overload in prisons, the Government adopted the Strategy for reducing the overload of accommodation capacities in the institutions for enforcement of penal sanctions in the period 2010–2050[33], which includes comprehensive measures to tackle this problem entailing the following activities: application of alternative measures

[32] "Official Gazette of RS", Nos. 202/05 and 63/09 – US.
[33] "Official Gazette of RS", Nos. 53/2010 and 65/11.

and sanctions and developing a trustee service; more intensive use of the concept of release on parole and early release from prison; expansion of accommodation capacities and improving prison conditions; improving of the technical capacities in the Directorate for enforcement of penal sanctions; establishing the jurisdiction of a judge over enforcement of penal sanctions; introducing a uniform IT system as well as a possible amnesty.

86. In keeping with the Action Plan, which envisages concrete activities to implement the Strategy, the alternative sanctions enforcement regime is (in the process of being) upgraded. Seven trustee offices were established (in Belgrade, Subotica, Sombor, Novi Sad, Niš, Kragujevac and Valjevo) and new offices will continue to be established according to a fixed plan. By making organisational conditions ready for the purpose, the penalty of "work in the public interest" and (the penalty) "suspended sentence with protective supervision" can now be enforced in the broader territory of the Republic of Serbia (currently 45 such sanctions are being enforced). On the other hand, new alternative measures and sanctions are being applied (the sentence of up to 1 year in prison without the convict leaving his home, i.e. when the convict is in what is known as "home prison"; and the measure to secure the presence of the defendant, i.e. prohibition to leave home or place of residence – what is known as being "under house arrest") throughout the territory of the Republic of Serbia. Currently there are 260 measures and sanctions being enforced this way (with or without electronic surveillance).

87. A number of measures envisaged by the Strategy have already been incorporated into the new legislative texts. The Law amending the Criminal Code (CC)[34] introduced mandatory release on parole when conditions stipulated by law have been fulfilled. Further, the new CPC, the effective date of which has been deferred, except in relation to the part (on) proceedings for organised crime, regulates the concept of release on parole in a different way. It is stipulated that a subpoena, to attend the hearing where release on parole is to be decided, is to be sent to the convict (if the court holds that his presence is required), the defence counsel, the public prosecutor and to the representative of the treatment service from the institution instead of (following) the procedure (going on) strictly in writing, (which has been applicable) until now.

88. The Amnesty Law was enacted in November 2012. The first effects of the Law are already visible, so the number of persons deprived of liberty was reduced from 11,300 persons to 10,228 as at 7 January 2013.

89. During 2012, by decision of the Head of the Directorate for enforcement of penal sanctions, 235 convicts were released from prison on a provisional basis. Early release is a concept which exists in parallel with regular release on parole and is stipulated by article 173 of the LEPS pursuant to which the Head of the Directorate may provisionally release a convict if the latter has served nine tenths of his sentence; has no more than 3 months before expiry of his sentence; (or) on account of good conduct and results achieved in the treatment program.

90. As for increase in accommodation capacities, a new strictly closed-door type institution for placement of 450 persons in Belgrade was started up in February 2012.

91. According to plan, two new institutions are to be built (funding secured from the proceeds of a CoE Development Bank loan); notably, one in Kragujevac for placement of 400 persons, (with) construction due to be completed by 2016, and another in Pančevo for placement of 500 persons, with the same time line for works completion.

92. With regard to the living conditions of detention and the mentioned overload in the District Prison in Belgrade, detention capacities were expanded with the reconstruction of

[34] "Official Gazette of RS", No. 121/2012.

the facility within the Correctional institution in Belgrade – Padinska Skela, with a capacity of 180 beds, and the number of detained persons in the District Prison in Belgrade was reduced by around 500 persons in 2012 compared to 2010.

(c) Improving health care for inmates

93. The Directorate for enforcement of penal sanctions increased the number of health care staff so that the institution must have available the services of at least one physician, two nurses and a psychiatrist. It is upon the size of the correctional institution and the (relevant) requirements that the number of health professionals in its employ will depend. Serious efforts are exerted to increase the number of staff in the health care service, as borne out by the Draft rulebook on new organisational structure and staffing scheme in the Directorate which envisages an increase of staff numbers in the health care service by 133.

94. Significant funds are funnelled towards procurement of new medical equipment for prisons according to the agreed plan and subject to funds availability. Complete state-of-the-art medical equipment was procured for the Correctional institution in Belgrade and the Correctional institution in Požarevac-Zabela; this equipment includes an electrocardiograph (ECG), a defibrillator and a sophisticated ultrasound device. Equipment for a dentist's office was procured for the Correctional institution in Belgrade, Correctional institution in Požarevac-Zabela and the District Prison in Novi Sad. In January 2013 reconstruction works started at the Somatic patients ward in the Special Prison Hospital in Belgrade and will finish by end of the third quarter in 2013.

95. Medical documentation from all correctional institutions is kept in line with the record-keeping methods employed within the Ministry of Health. A health file is opened immediately upon admission to the institution and entry is made of all data on health care and treatment of persons deprived of liberty. During the first medical check-up upon admission basic laboratory tests are taken, physical medical check-ups are done, X-ray examination of the lungs is proposed and testing for HIV and Hepatitis C. HIV and Hepatitis C testing is on a voluntary basis and (findings are) confidential. Tuberculosis patients are treated by controlled DOT therapy and Hepatitis C and HIV cases are treated at the infectious-disease clinics, which are within the Ministry of Health. Health care at the institutions is delivered on three levels. The first level is implemented by the physicians employed in the institution; the second level are the in-patient wards within the institution itself where medical specialists are employed as well as the Special Prison Hospital in Belgrade; the third level are specialised health institutions within the Ministry of Health.

(d) Legal protection measures for persons placed in specialised institutions for in-patient treatment on a non-voluntary basis

96. Currently a thorough reform of the legal system of the Republic of Serbia is underway and one of its priorities are persons with disabilities. The Ministry of Labour, Employment and Social Policy is undertaking measures, before relevant legislative initiatives for amending the laws have been realised (esp. the Out-of-court Procedure Code), to implement, to the largest extent possible, the recommendations of the international human rights protection bodies in organising caregiving and/or placement in residential institutions of adults deprived of their (contractual) capacity (to engage in a) business (activity).

97. The Ministry of Labour and Social Policy has requested all the SWCs and institutions where mentally ill persons are placed to review placement (in such residential institutions) and obtain the consents valid under the law for placement in the institutions. The SWCs were instructed that the aim of the mentioned procedures must not be en masse stripping of the thus placed beneficiaries of their contractual capacity but a credible assessment, instead, of the remaining capacity, with the beneficiaries taking part subject to

their conditions permitting. To upgrade the professional competences of the SWC employees, a training was delivered during 2010 in the area of caregiving and/or placement in residential institutions and a training is planned on the same topic for employees in social welfare institutions.

(e) Policy of use of means of restraint at health care facilities

98. At the Clinic for psychiatric diseases "Dr Laza Lazarević" in Belgrade, the Special hospital for addiction diseases in Belgrade, Special hospital "Gornja Toponica", Special hospital for psychiatric diseases "Dr. Slavoljub Bakalović" in Vršac, the Special psychiatric hospital in Kovin and Special hospital "Sveti Vrači" (Holy Saints Costas and Damian – Unmercenary Physicians) in Novi Kneževac, there is a clearly defined procedure for voluntary admissions and non-voluntary admissions (forced admissions), which is implemented in accordance with the Law on Health Care and the Out-of-court Procedure Code.

99. At all these institutions there are internal protocols on use of means of restraint on patients, which follow the recommendations of the European Committee for Prevention of Torture. In case of a possible use of means of restraint, the usage protocol is signed by the physician (who adds) an appropriate explanatory note on the reasons for this use and the patient's health status in the disease history, in compliance with the highest possible standard of humaneness, physical and mental integrity of the patient. Available to every patient is the option of appeal to the Protector of Patients' Rights either in person, by mail, by phone or through his attorney. Every patient can, either by himself or through his counsel, address the competent court or file an appeal against the court decision on forced placement in the institution. Patients may address the Ombudsman and other competent authorities to have their rights protected. Through internal-type and external-type educations for medical personnel a clear procedure of steps (to follow) has been designed in relation to persons forcibly detained for purpose of medical treatment or, if the need arises, for them to be provisionally restrained.

(f) Living conditions for beneficiaries with mental development difficulties in the Special Children and Youth Institution at Stamnica[35]

100. Pursuant to the Regulation on the network of social welfare institutions[36] it was decided to establish two separate working units within the Institution for Children and Youth "Dr. Nikola Šumenković", Stamnica, notably the working unit for children and youth (children and young people with development difficulties); and the working unit for adults (adults with intellectual and mental communications difficulties).

101. Support to the de-institutionalisation process also includes the aspect of improving the quality of life for children placed in social welfare institutions. For the third consecutive year, on the initiative of the Center at Stamnica, a festival is organised of theatre performances involving children with development difficulties from this but also from all other centers for children with development difficulties, children without parental care and children from the local community. The aim of this Festival is integration of persons with mental development difficulties into the broader society and shattering of prejudice the society has about them.

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[35] In Annex No. 8 to this report there are data on financial investments in the institution for children and youth "Dr. Nikola Šumenković", Stamnica as well as on the activities in support of skills development of beneficiaries and switch-over to an independent lifestyle, cultural-entertainment and recreational activities.

[36] "Official Gazette of RS", No. 16/2012

102. A book of records was introduced in the Center to keep track of use of the "measures of restraint" and entry is made there of the following: the name of the person that the restraint measure was applied to; (date and time) when the measure was imposed; and how long it lasted. Measures of restraint may be applied only on the order of the psychiatrist and to a concrete beneficiary without a possibility of the psychiatrist to issue a carte blanche order. Overload in the institutions is addressed step by step as follows: (a) by building a new facility in what is known as the "upper zone" of this institution; (b) by prohibiting new admissions; (c) through the activities to move beneficiaries from the institution into protected housing or into a family setting; and, finally, (d) by transfer of beneficiaries to the newly established residential institutions that provide caregiving to seriously or gravely mentally challenged adults and senior citizens.

103. Activities and work with beneficiaries focus on their remaining capacities, learning of life skills, open-air outings and creation of conditions for their reintegration into the local community. For all beneficiaries with placement during 2010 individual treatment plans were developed following the accredited methodology which the institution staffers had been trained to employ, so that they currently use it unaided. Based on these plans, a completely individualised approach was provided for every beneficiary. The program was accredited by the Ministry of Labour, Employment and Social Policy and included in the pilot for setting the standards in social welfare institutions.

104. The special program ISEEDORA – "Information system of electronic record-keeping on beneficiaries with development difficulties" was installed in the Center which enables assessment and arrangements (to be made) for beneficiaries with development difficulties for as independent a life as possible in the least restrictive setting. The program entails gathering and processing data on the persons participating in program activities.

105. The gym (at the Center) was refurbished and adapted; it is intended for rehabilitation and physical therapy. A part of the gym is equipped with sophisticated devices and physical therapy equipment and a part is intended and equipped for recreation and rehabilitation of beneficiaries.

26. Status of the "Ovčara" case

106. Please see the reply to point 12 (Other war crimes investigations) in the replies to the request for additional information that the Committee against Torture addressed to the Republic of Serbia authorities on the occasion of review of the initial report of the Republic of Serbia on implementation of the Convention against Torture for the period 1992-2003, which were sent to the Committee in August 2012.

107. On 20 April 2011 the War crimes Prosecution Office submitted a request for an investigation, Ktrz 6/11, against defendants Petar Ćirić (a.k.a. Pera Cigan) and Slavko Perović (a.k.a. Slavo Cigan) on the grounds of suspicion that they had jointly committed a war crime against prisoners-of-war (POWs) under article 144 of the Criminal Code (CC) of FRY in connection with article 22 of the Criminal Code of FRY. The defendants were charged with having, as members of the Territorial Defense (TO) Vukovar, in the period from 20 to 21 November 1991, at the farm estate Ovčara, together with the members of the unit they belonged to, notably with: defendants Miroljub Vujović; Stanko Vujanović; Miroslav Djanković; Jovica Perić; Milan Vojnović; Goran Mugoša and Damir Sireta, as well as with the members of the volunteer unit "Leva Sudoperica", notably defendants Milan Lančužanin, Predrag Milojević, Predrag Dragović, Ivan Atanasijević, Djordje Šošić and Nada Kalab and volunteer defendant Saša Radak, formed two lines, kicked and punched the POWs inflicting bodily injuries and, once they noted down the names of the POWs, the POWs were taken by tractor in several groups to Grabovo, about 1 km away

from Ovčara; they formed a shooting platoon and they shot them (POWs) with firearms and thus took their life by execution whereas the defendant Petar Ćirić, also, in front of the storage shed at Ovčara, took part in the shooting of the last group of ten or so POWs; the lives of 200 persons were taken this way, of whom 193 were identified.

108. The defendant Petar Ćirić was heard by the investigating judge of the Higher Court in Belgrade – War Crimes Department, on 5 May 2011, and a decision was issued to open an investigation in relation to both of these defendants. The defendant Petar Ćirić is serving a 10-year term in prison in the Correctional institution in Sremska Mitrovica for the crime of rape and his sentence will expire in 2015.

109. During the proceedings it was established that the defendant Slavo Petrović passed away on 3 March 2009 in the Netherlands. After this, a decision in relation to him was issued on 6 October 2001 to terminate the investigation.

110. In the period to date the necessary documentation has been obtained and 10 witnesses interviewed and the investigation continues.

27. Statistical data on procedures related to treatment at the hands of the police which contained elements of torture or ill-treatment

111. On account of the criminal offences with elements of violence, the Internal Control Department of the MoIA, in the period from 2003-20 March 2012, filed 62 criminal complaints (2012 – 2; 2011 – 7; 2010 – 6; 2009 – 9; 2008 – 17; 2007 – 6; 2006 – 4; 2005 – 3; 2004 – 8)[37].

112. The criminal complaints the Department filed, on account of the criminal offences with elements of violence, covered 83 police officers. Against all the police officers (who had been) reported on, both disciplinary measures were taken and decisions issued to remove them from the MoIA until the disciplinary proceedings were over. According to the information available in the Department, of the total number of criminal complaints with elements of violence and torture, 8 criminal complaints were rejected; in two cases the competent prosecution offices dropped charges; and in one case the investigation was terminated.

113. During 2009 there were 3 complaints filed by persons deprived of liberty for excessive use of means of coercion in correctional institutions, a total of 18 disciplinary proceedings were conducted. It was established that 15 cases involved over-excessive use of means of coercion, so that the officers (concerned) were ordered to pay pecuniary fines, and in one case the measure of dismissal from the job was imposed. Criminal proceedings were initiated against 13 security service officers on the grounds of suspicion that they had committed the criminal offence of abuse and torture.

114. During 2010 there were 3 complaints filed by persons deprived of liberty for over-excessive use of means of coercion in correctional institutions, two disciplinary proceedings were conducted. It was established that in 2 cases there was over-excessive use of means of coercion, so that pecuniary fines were imposed against the officers (concerned).

115. During 2011 there were 5 complaints lodged by persons deprived of liberty for over-excessive use of means of coercion in correctional institutions, 9 disciplinary proceedings

[37] Annex No. 9 to this Report gives a breakdown of the criminal complaints filed.

were conducted. It was established that 5 cases involved the over-excessive use of coercion measures, so that in 4 cases pecuniary fines were imposed against the officers (concerned) and in 1 case the measure of dismissal from the job was imposed, whereas 5 disciplinary proceedings are still ongoing.

116. In the period 2009–20 March 2012, the Internal Control Department checked upon (the veracity of) the allegations from 391 applications in which citizens were complaining about police officers on account of their excessive use of physical force and other means of coercion. In 59 cases it was established that the police officers in action had made mistakes, which was why the Department proposed disciplinary measures to be imposed against the police officers.

28. Data on cases where individuals who had complained of ill-treatment at the hands of the police when apprehended were subsequently accused by the police of resisting arrest

117. The MoIA does not have available data relating to the number of cases where individuals who filed a complaint over ill-treatment at the hands of the police when being apprehended were subsequently accused by the police authorities of resisting arrest[38].

29. Information on the outcome of investigations

(a) The allegation of ill-treatment of persons remanded in custody/detainees by the security staff in the District Prison in Leskovac during 2009

118. In relation to the alleged ill-treatment of persons deprived of liberty in the District Prison in Leskovac during 2009, disciplinary proceedings were conducted against 13 employees on account of serious breach of duties stemming from employment. It was established that 13 cases involved over-excessive use of coercion measures or unlawful practices or failure to act the way a public officer is empowered to, so that a pecuniary fine was imposed against 12 public officers and in 1 case the measure of dismissal from the job was imposed. Against 13 public officer's criminal proceedings, too, were initiated before the competent court on the grounds of suspicion that they had committed the criminal offence of abuse and torture under article 137 of the CC, which are under way.

(b) Allegation of physical abuse of inmates at the Zabela correctional institution, the District Prison in Belgrade and the Special Prison Hospital in Belgrade

119. The Directorate for enforcement of penal sanctions gave clear instructions to the institutions to abide by the provisions of the LEPS and the Rulebook on measures to keep order and security in the institutions for enforcement of penal sanctions in cases of use of coercion measures. Furthermore, the Staff Training Center in the Directorate for enforcement of penal sanctions, as part of its regular trainings, pays special attention to the education of security service staff on the use of coercion measures.

120. As for the event of 17 November 2007 (the case when a detainee was slapped on the face), disciplinary proceedings against the senior commander are over and the disciplinary penalty imposed against him was a two-year ban on promotion in the service.

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[38] Statistical overview of cases where individuals submitted an application on ill-treatment at the hands of the police when apprehended in the period from 1 July 2003-20 October 2012 is given in Annex No. 10 to this Report.

(c) Death of inmate X in July 2005 during transfer from the Zabela correctional institution in Požarevac to the Special Prison Hospital in Belgrade

121. This is about a case made on the application submitted by Mila Petković on account of her son's death. Since mistakes had apparently been made by the competent authorities in this case, the Ministry of Justice reached a settlement deal with the consent of the Directorate for enforcement of penal sanctions. The female applicant was paid the counter value of EUR 40,000.00 in dinars (RSD) and she withdrew her application with the European Court of Human Rights (ECHR) but also relinquished her claim of EUR 60,000 made in the charges against the Republic of Serbia she had pressed before a national court. The ECHR took a formal decision noting that the case was closed.

122. The Republic of Serbia undertook to conduct an efficient and substantive investigation into the circumstances of the death of M.P. Criminal proceedings were instituted before the Basic Court in Požarevac to establish liability in the case of the death of convict M.P. in the correctional institution in Požarevac- Zabela on 17 June 2005 as part of the investigation Ki 49/09-49 before the Municipal Court in Požarevac. Currently appellate proceedings are in progress before the Appeals Court in Belgrade.

(d) Alleged physical abuse and sexual abuse of drug addicts at Crna Reka Rehabilitation center of the Serbian Orthodox Church

123. The Rehabilitation center of the Serbian Orthodox Church in Crna Reka is in the Novi Pazar area, which is why the public prosecution offices from the territory where the Higher Prosecution Office in Novi Pazar performs its prosecutorial function, instituted three proceedings in relation to the physical abuse and sexual abuse of drug addicts in the mentioned rehabilitation center.

124. The first proceedings were, in the narrow sense of the word, not related to physical abuse and sexual abuse of drug addicts but were conducted against P.B., R.N., and P.B., as they had physically assaulted the parents of one of their beneficiaries when these parents came to visit. These proceedings ended with delivery of final judgments on suspended sentences; however, Branislav Peranović was convicted for the criminal offence of (inflicting) a grave bodily injury under article 121, paragraph 1 of the CC and Nemanja Radosavljević and Vladimir Petrović for the criminal offence of partaking in a fight under article 123, paragraph 1 of the CC.

125. The second proceedings are in progress on charges, pressed by the District Public Prosecution in Novi Pazar, KT No. 35/09, dated 26 June 2009, which charged R.N. with the crime of rape under article 178, paragraph 3 in connection with paragraph 1 of the CC and the criminal offence of violent behavior under article 344, paragraph 2 in connection with paragraph 1 of the CC, and (charged) P.M. with the crime of rape under article 178, paragraph 3 in connection with paragraph 1 of the CC. A judgment of conviction was handed down in proceedings at first instance but the Appeals Court in Kragujevac, in its decision KZ.I. 1902/10 dated 8 December 2010, reversed the judgment and referred the case back to the first-instance court for re-trial.

126. In the third case the Municipal Public Prosecution in Tutin brought charges KT. No. 215/09 dated 8 September 2009 against P.B. and R.N. for commission of one criminal offence each – abuse and torture under article 137, paragraph 2 of the CC. The indictment took legal effect.

(e) Reports on torture or cruel, inhuman or degrading treatment or punishment of persons with disability in social welfare institutions

127. The Ministry of Labour, Employment and Social Policy sent, conducive to preventive action and precluding of possible inhuman treatment, abuse or torture in social

welfare institutions, to all social welfare institutions the relevant Instruction on 12 July 2011. By this document every social welfare institution in the Republic of Serbia was bound to report, within no more than 24 hours, every type of incident, and particularly the ones with elements of inhuman conduct, abuse or torture in that institution to the Ministry of Labour, Employment and Social Policy but also to make an internal plan and stipulate internal procedures to follow in such situations.

128. Information is gathered and put on record in the services of the republic and provincial social welfare inspectorates and it is immediately assessed whether the breach of a beneficiary's right or the degree of threat involved is such as to require urgent intervention on the part of the inspection service. In the reporting period, the largest number of reports had to do with absence of beneficiaries from the institution without authorisation to leave, damage done to property, all of which can be classified as low-urgency incidents. Also recorded, however, were 4 cases with very serious consequences in relation to the beneficiaries' life and health, perpetrated by the employees, or there is (such a) suspicion or there were mistakes made in (giving) protection to beneficiaries:

(1) Social welfare inspectors examined the circumstances of the death of a beneficiary, minor G.N., aged 15, in the Residential Center at Kulina and carried out control of the practices in the entire institution. The case was reported to the police, a criminal complaint was filed with the prosecutor against John Doe and the proceedings are still not over. The Manager of the Center was removed from office due to this event and measures in line with the law were imposed on the employees who had been entrusted with providing care to this beneficiary;

(2) Inspectors checked the action on the part of the Center in Tutin in relation to protection of the beneficiary S.H. relating to the bodily injuries he sustained when he fell, which were not attended to on time by the institution. The management of the Center was ordered to take action without delay in relation to the employees, in keeping with the law;

(3) It was found that the beneficiary C.B. was subjected to physical abuse by an employee in the night shift at the Center at Kulina. The manager took immediate measures, within his powers under the law, against the employees in keeping with the law (labor contract cancelled and suspension (from duty));

(4) Circumstances were established on physical violence against the beneficiary M.J. by an employee in the Center at Sremčica. The employee was suspended from duty forthwith and procedures in keeping with the law are in progress.

129. All 4 inspection monitorings mentioned above were extraordinary and urgent and in the last 3 (the inspectors) acted in line with the MoIA Instruction referred to above.

130. At the Ministry a by-law was passed to the Law on Social Welfare: *Rulebook on prohibited treatment on the part of social welfare personnel*[39]. Under this rulebook, employees in a social welfare institution or with a social welfare service provider are prohibited from engaging in any form of violence against a beneficiary, physical, emotional and sexual abuse, exploitation of beneficiaries, abuse of trust or power enjoyed in relation to the beneficiary, neglect of the beneficiary and other treatment placing the beneficiary's health, dignity and development in danger. This document defines in detail the prohibition of physical, emotional and sexual violence or abuse, prohibition of exploitation, prohibition of neglect, and on every form of violence mentioned, it is specified, in separate provisions, how they relate to a child who is a service user, which highlights the child's special status and the need to protect it in the service use process. The duty of reporting is defined in

[39] "Official Gazette of RS", No. 8/2012 of 2 February 2012.

particular as well as security checks of other beneficiaries, in case violence occurs in residential centers for beneficiaries or other service providers.

30. Acting upon complaints filed by persons deprived of liberty

131. The adoption of the LEPS, with the Amendments made in 2009 and 2011, introduced a two-track procedure for protection of the rights of convicts(:) within the Directorate for enforcement of penal sanctions; and (by means of) judicial protection (which is effected) by institution of administrative dispute proceedings before the Administrative Court. Convicts are familiar with their rights and use them regularly when they are dissatisfied with any decision which curtails or infringes upon a right laid down by the law.

132. The introduced complaints system is more effective since it sets tight deadlines for decision-making, for issuing the (relevant) decision accompanied by an explanatory note (on legal reasoning), and for check-up on legality of the decisions issued, both within the Directorate, in the complaints proceedings against the first-instance decision, and by means of the right (of recourse) to judicial protection.

133. Convicts were informed about the new method of rights protection with a recommendation to seek to have a part of their requests executed within the institution itself before instituting formal proceedings under article 114 of the Law which stipulates that they may first approach the head of the relevant service in the prison to implement their rights. In this case the shortest time line has been set for action by official institutions which are required to send their reply in writing with an explanatory note within 5 days. If the convict holds that his right was infringed upon, that other practices were carried out improperly against him in the institution or is dissatisfied with the reply received, he may file a complaint with the warden who is required to issue a decision on it within 15 days. The convict has the right to appeal this decision with the Head of the Directorate. Against the final decision which caused the convict's rights to be breached or restricted during his prison sentence, the convict may apply for judicial protection to the Administrative Court which will decide thereon within 30 days.

134. If the convict holds that his application or complaint have a confidential character, he may approach the warden with a request for a talk in private, without specifying the reasons. The convict may address the Head of the Directorate directly if he holds that his right has been infringed upon by the warden's actions. The Head of the Directorate or the person he has authorised may examine whether the complaint is well-founded also by inspecting the documentation of the institution, talking to the complaining convict, to other convicts or to the staff in the institution. If it is established that the complaint is well-founded, the Head of the Directorate will order that the infringement of the convict's right be removed.

135. To ensure that convicts become better informed, the Directorate distributed to the institutions the Book of house rules and treatment; Guide for convicts to the reception department; Manual for convicts with translations into English, Albanian, Romanian, Hungarian and Romany and placed boards with this material and the submission, complaint and appeal forms for convicts at (easily) accessible places in the institutions.

136. Independent complaints mechanisms were established as well (introducing the right (of recourse) to judicial protection, by submitting the application for appeal against the final decisions reached in the Directorate, as well as the right to file a complaint with the Ombudsman). Convicts address these authorities regularly whenever they hold that a right has been infringed upon during their prison sentence.

31. Data on the measures of redress for damage sustained by victims of torture, as determined by the courts of the Republic of Serbia

137. In the period 2008–2013 the courts in the Republic of Serbia received 13 claims for redress for non-pecuniary damage from victims of torture or from their families, of which one claim was rejected as premature, two are still under procedure and 4 cases have not yet closed with a final judgment.

Amounts awarded by court decision in every case

2009	*2010*	*2011*	*2012*	*2013*	
1 claim rejected as premature	370,000.00	1,200,000.00	500,000.00	4,000,000.00	**Total: 13**
	1,480,000.00		4,500,000.00	1 under way	
	400,000.00		100,000.00		
			320,000.00		
			4,800,000.00		
			1 under way		

32. Right to redress for damage sustained by victims of torture

138. Right to redress does not depend on existence of a judgment in criminal proceedings. Redress can be realised despite the fact that the perpetrator has not been identified, which was the situation (in evidence) in the cases mentioned under point 31.

139. Investigations always continue in order to identify the perpetrators and in order to bring them to justice.

140. The victim of torture or cruel and inhuman or degrading treatment may get redress and the indemnification procedure does not depend on whether any disciplinary measure or penal sanction was imposed on the perpetrator.

33. Redress programs delivered to victims of torture and ill-treatment

141. Concrete redress programs do not exist. The Republic of Serbia pays by cash the damages to the victims of torture and this is the only mechanism in place and functioning for the time being.

142. The International Aid Network (IAN) Center for rehabilitation of victims of torture is the only center of this type in the state, specialising in professional, comprehensive rehabilitation of persons who have survived an experience of torture and of their family members. Since it was established in 2000, over 4,500 victims of torture and family members received rehabilitation in the Center in the form of psychological, psychiatric, general and specialist medical assistance, free-of-charge medicine, legal aid and representation in court and professional empowerment by way of a variety of (training) courses. Psycho-social support which IAN provides also entails training which could help clients to find a job – courses in computer (science), English language, free enterprise and social skills.

34. Abiding by the principle of inadmissibility of evidence obtained by torture

143. Based on information obtained from the Crime Section of the Supreme Court of Cassaion and/or all the appeals courts and lower-instance courts under their jurisdiction, it was established that their jurisprudence included one case on evidence obtained by torture. According to the report of the Higher Court in Kraljevo, the District Court in Kraljevo found, in its final decision K 26/05, that certain pieces of evidence in the proceedings had been obtained in contravention of the provisions of the Criminal Procedure Code (CPC), that is, they constituted evidence on which no court decision could be based because the defendants in that case, upon their deprivation of liberty, were subjected to torture in the Police Department premises in Novi Pazar, or, more specifically, certain evidence was extorted from them by use of coercion.

35. Human rights defenders

144. According to the data obtained from the First Basic Public prosecution Office in Belgrade, the said prosecution office acted in the following cases involving journalists as the injured parties:

- In the criminal case Kt. No. 68/10 dated 16 February 2010, charges were brought against K.J. for the criminal offence of endangering security under article 138, paragraph 3 in connection with paragraph 1 of the Criminal Code (CC), perpetrated against (Ms) Branka Stanković, journalist of Radio-TV B92. The First Basic Court in Belgrade, in its final judgments, found the defendant guilty and sentenced him to a 3-month term of imprisonment.
- In the criminal case Kt. No. 4936/19, charges were brought against R.M. for the criminal offence of endangering security by means of rabble-rousing under article [illegible] paragraph 3 in connection with paragraph 1 of the CC in connection with article [illegible] of the CC and the criminal offence of violent behavior under article 344, paragraph 1 of the CC, perpetrated against Branka Stanović, journalist. The First Basic Court in Belgrade, in its decision, found R.M. guilty of the mentioned criminal offence and sentenced him to a single imprisonment term of 1 year and 4 months. The Appeals Court in Belgrade overturned the first-instance judgment in relation to the decision on the penal sanction for the criminal offence of violent conduct under article 344, paragraph 1 of the CC and sentenced the defendant R.M. to 6 months in prison, whereas the first-instance judgment was overruled in relation to the criminal offence of endangering security under article 138, paragraph 3 in connection with paragraph 1 of the CC and the court briefs were referred back to the court at first instance for re-trial.
- In the case II Kt-2823/09, charges were brought, following an event identical to that in the case Kt-4936/10, when Branka Stanković was the injured party, against O.N. for the criminal offence of endangering security under article 138, paragraph 3 in connection with paragraph 1 of the CC, the investigations against suspect G.Đ. on account of the same criminal offence were terminated and charges brought against B.N., Lj.G., P.A., G.M. and Dj.D., each for the criminal offence of endangering security under article 138, paragraph 3 in connection with paragraph 1 of the CC, whereas the investigations against I.A., Ž.M. and B.D., for the criminal offence of endangering security under article 138, paragraph 3 in connection with paragraph 1 of the CC were terminated.

145. According to the data obtained from the Higher Public Prosecution Office in Belgrade following the event of 14 April 2007 when a hand grenade, planted by John Doe, went off on the window sill of the apartment of Dejan Anastasijević, journalist of the weekly "Vreme", the then District Public Prosecutor's Office in Belgrade submitted a request to the MoIA Service for Organised Crime Combat to gather the necessary information in order to (enable them to) undertake all measures stipulated under the law to establish the identity of John Doe as well as ascertain whether there was presence of elements of the crime of terrorism under article 312 of the CC. For the same purpose, a request was sent to the Crime Police Directorate – Section for Crime Mechanics to gather the necessary information. In response to these requests, relevant data gathering is underway.

36. Death penalty in the criminal legislation of the Republic of Serbia and implementation of the national strategy for protection of children from violence

146. There is no death penalty in the Republic of Serbia. Under article 24 of the Constitution human life is inviolable.

147. The Republic of Serbia adopted the Proceeding framework for a National Strategy against violence, and, shortly after, also the General Protocol for protection of children from abuse and neglect, with the main principles and guidelines for child protection from abuse and neglect.

148. Since then to date quite a number of documents have been adopted for protection of children from abuse:

- Mental health care development strategy[40];
- National Action Plan for children[41];
- National Strategy for prevention and protection of children from violence[42].

149. Following (adoption of) the General Protocol on child protection from abuse and neglect the following Special Protocols were adopted relating to the sectors dealing with child protection:

- Special Protocol for child protection in social welfare institutions from abuse and neglect (2006);
- Special Protocol on action by police officers in protecting minors from abuse and neglect (2006);
- Special Protocol for protection of children and pupils from violence, abuse and neglect in educational institutions (2007);

[40] "Official Gazette of RS", No. 8/2007.

[41] The Government of the Republic of Serbia, February 2007, General child policy until 2015 – a specific goal is to establish an efficient, operational, multisectoral network for child protection against abuse and neglect.

[42] The Government of the Republic of Serbia in 2007 proceeded from the principle that all children in RS (can) grow up in a safe environment free from every kind of violence where the child's personality and dignity are respected, the child's needs and development possibilities are recognised and the child is enabled to develop tolerance and use non-violent communication forms.

- Separate health care system protocol for protection of children from abuse and neglect (2009);
- Special Protocol on action by judicial authorities in protecting minors from abuse and neglect (2009).

150. The Ministry of Health established in 2010 by its decision a separate Working Group on child protection from abuse and neglect. The aim of the working group is monitoring of implementation of the Special Protocol; cooperation with the social welfare system which plays the role of Coordinator in multi-departmental system of child protection from abuse and neglect; design and delivery of education programs for expert team members; review of reports made by teams of experts on abuse and neglect and of reports of the Public Health Institute of Serbia; and, if necessary, proposing measures to promote child welfare; evaluation of the practical implementation of the provisions of the Special Protocol; proposing changes and other measures to improve quality of child protection; and submitting the annual report on the activities to the Minister of Health.

151. Since 2010 health institutions have had the duty to set up expert teams for child protection from abuse and neglect.

152. During 2011 regional teams were set up in Belgrade, Kragujevac, Novi Sad and Niš; they are (responsible) for implementation of the Special Protocol of the health care system for child protection from abuse and neglect in the primary health care institutions.

153. The Government adopted the National strategy for prevention and protection of children from violence in December 2008 and in early March 2010 the Action Plan additional to this Strategy. In late 2010 a conference was held titled "Towards a safer childhood" at which the results of implementation of the Strategy and the Action Plan were presented. All the relevant systems monitor and implement the Strategy goals within their competences and (fulfilment of) general goals (is) followed up by the Council for the Rights of the Child.

154. As an indicator of the efforts the Republic of Serbia has exerted in order to regulate in even more detail the issues related to protection of children's rights from violence and corporal punishment, it developed the Draft law on the rights of the child, which regulates this subject matter in a modern and detailed manner. The draft was developed by a working group with the Ombudsman who will move the bill (for adoption) in the National Assembly.

37. Use of means of restraint on persons with disabilities

155. At correctional institutions the measure of tying up inmates (restraint) is applied following the opinion and order of the neuropsychiatrist in the most serious cases of attempted suicide or in order to prevent repeated self-injurious behavior when serious health-related consequences cannot be prevented from arising by any other measures.

156. The staff are required, whenever they notice there is risk of self-injurious behavior, repeated self-inflicted injuries or a suicide attempt to provide an examination by a neuropsychiatrist instantly and without delay.

157. The measure is always applied on the proposal of the neuropsychiatrist subject to letting the warden know. When the physician proposes to tie the patient up, the decision is taken to apply this measure. The neuropsychiatrist determines how long the measure will last and (when) to terminate it.

158. The managements of the institutions have undertaken a number of measures to monitor intensively the use of these measures. During enforcement of the measure the person is placed under intensive monitoring by the medical personnel, security service officers and the corrective training officers. The person is untied while the measure is on only to go to the toilet, maintain his personal hygiene, take his meals, during medical examination, talks with his corrective training officer and when taking his regular therapy.

159. The correctional institutions keep records on restraint of persons with mental disability. During 2011 a total of 275 cases of tying-up (restraint) of persons deprived of liberty with mental disability were recorded, notably 230 in the Special Prison Hospital in Belgrade, 14 in the District Prison in Leskovac, 12 each in the Correctional institution in Požarevac – Zabela and the Correctional institution for women in Požarevac, 6 in the Correctional institution in Sremska Mitrovica and one case in the District Prison in Kragujevac.

160. To secure transparency of the activities of the residential institution for placement of beneficiaries with disability and set up independent monitoring, the Ministry of Labour and Social Policy concluded in June 2011 the Memorandum on Cooperation with the organisation Mental Disability Rights Initiative – MDRI-S – in order to carry out the project "Monitoring of the institutions in social welfare reform". As part of its monitoring, this organisation carried out visits to the following social welfare institutions: Infants, Children and Youth Welfare center in Belgrade, Center Kolevka+ (Cradle) in Subotica, Center for Persons with Autism in Belgrade, Center Veternik in Novi Sad, Center Sremčica in Belgrade, Center Stamnica and Adults Residential Center in Kulina.

161. In all special hospitals for psychiatric diseases there are protocols on restraint of all patients, as well as the duty to keep track of every case of patient restraint, but not specifically of persons with disabilities.

38. Steps taken to implement the recommendations of the Committee (A/59/44, para. 213 (a) to (t)) addressed to the State party in November 2002, as part of the inquiry procedure provided for in article 20 of the Convention

162. Please see replies to points 2 (a) and (b), 5, 6, 8, 16, 18, 19, 27, 32 and 33 second periodic report of the Republic of Serbia on the implementation of the Convention against Torture.

39. Action on the part of Republic of Serbia authorities on individual applications pursuant to article 22 of the Convention

163. A total of 5 claims for award of damages to victims of torture and to their families were approved.

1. (To) Danilo Durmić – amount of RSD 200,000.00 paid in May 2010;
2. (To) Danilo Dimitrijević – amount of RSD 250,000.00 paid in May 2008;
3. (To) Jovica Dimitrov – amount of RSD 450,000.00 paid in November 2011;
4. (To) Radivoje and Vesna Ristić – amount of RSD 1,487,185.00 paid in March 2006;

5. (To) Ljiljana, Aleksandra and Slobodan Nikolić – amount of RSD 1,645,145.00 paid in November 2008 as partial redress, while the proceedings on (the claim for) the second part of redress are still in progress.

40. Measures taken by the Republic of Serbia in order to respond to terrorist threats and the impact of these measures on respect for human rights

164. Human rights protection of persons subjected to anti-terrorist measures is ensured by very detailed procedure under the law, notably pursuant to the provisions of the Law on the Security-Information Agency; the CPC as well as the provisions of the Law on organisation and competences of administrative bodies in suppression of organised crime, corruption and other serious crimes.

165. The duties related to security protection of the Republic of Serbia and detection and prevention of any activities aimed at undermining or overthrow of the order of the Republic of Serbia laid down by its Constitution are performed by the Security-Information Agency, in accordance with the (relevant) provisions of the Law.

166. Pursuant to article 14 of the Law on the Security-Information Agency[43] derogation from the principle of inviolability of correspondence and other means of communications may, on the proposal by the Agency Director, be approved by the President of the Supreme Court of Cassation by the latter's decision or by the judge of that court designated for the purpose of deciding such proposals in case the Court President is absent, within 72 hours as of the submission of the proposal; the proposal and the decision are to be made in writing and the measures approved may be applied no longer than for 6 months but may be extended once more, on the basis of a new proposal, by 6 months.

167. Article 15 of the Law stipulates that, when mandated by reasons of urgency and especially in cases of home-grown and international terrorism, derogation from the principle of inviolability of correspondence and other means of communications may be ordered by the Agency Director, by his decision, subject to getting the written approval for the start of appropriate measures beforehand from the President of the Supreme Court of Cassation or the authorised judge.

168. The CPC, Chapter XXIXa contains the provisions governing, in particular, the procedure in relation to criminal acts of organised crime, corruption and other extremely serious crimes including against the constitutional order and security of the Republic of Serbia as well as the crime of international terrorism and financing of terrorism. The provisions in the CPC Chapter specified above provide for the use of special measures by prosecution authorities to detect and furnish proof of the crimes referred to above which, inter alia, include the measure of surveillance and audio-recording of telephone and other conversations or communications and automatic computer search for the (relevant) personal and other data related thereto. Protection of persons in relation to whom these measures are applied is ensured under a very detailed procedure (which is required to be followed in order) to determine them; the competence of the authorities to issue decisions to implement them as well as (the competence) of the implementing bodies; it is further stipulated by the Law, however, that if the Public Prosecutor fails to institute criminal proceedings within 6 months as of the date when he was made familiar with the material obtained by use of these measures, or if he states that he will not use such material in the proceedings, or that

[43] "Official Gazette of RS", Nos. 42/2002 and 111/2009.

he will not demand that proceedings be instituted against the suspect, the investigating judge will issue a decision to destroy the gathered materials.

169. According to the data available at the Republic Public Prosecution Office, in 2010 charges were brought for the crime of terrorism under article 312 of the CC, against 40 persons, all of Albanian nationality, however, not a single final judgment was passed. During 2011, charges for this crime were brought against 8 persons, all of Albanian nationality, not a single final judgment was handed down. According to available data, no complaints were filed with the Republic Public Prosecutor's Office and the Prosecutor's Office for Organised Crime for flouting international standards in applying anti-terrorist measures in law and in practice. No complaints were lodged with the Supreme Court of Cassation for flouting international standards in applying anti-terrorist measures in law and in practice.

170. The Center for specialist police training and professional development designed, and the Minister of Internal Affairs adopted, the following specialist training programs: Curriculum for the course in anti-sabotage action at airports; Basic course in anti-sabotage action; Modified curriculum for the basic course in anti-sabotage action and Program of the Basic course in anti-sabotage action, based on which training currently takes place. Following these programs training was delivered to 70 attendees in 2007; 75 in 2008; 25 in 2009; 21 in 2010; 25 in 2011; and 75 in 2012 or (to) a total of 291 police officers have completed the Basic course in anti-sabotage action.

171. Since 1 January 2009 to date there have been no complaints by the persons covered by anti-terrorist measures and actions over the MoIA police officers' activities. In relation to every person for whom there were grounds for suspicion of being a potential perpetrator of the crime of terrorism, measures and activities have been undertaken in keeping with the law and in full compliance with (their) human rights and international standards.

41. New developments in the legal and institutional framework within which human rights are promoted and protected on the national level

172. With regard to new developments in the institutional framework, the combat against impunity and strengthening of accountability, rule of law and democratic society are reflected primarily in judicial system reform in the Republic of Serbia. Judicial system reform is designed in such a way as to contribute to more efficient court proceedings, guaranteed access to justice for all citizens, achieving better conditions for higher-quality and faster trials which will take place within a reasonable time as well as to remove as many shortcomings as possible that have been noticed in practice so far. Judicial system reform in the Republic of Serbia goes beyond adoption and implementation of laws on judicial organisation whereby a new network of judicial authorities has been established; the following step taken in the reform is adoption of new procedural codes, both in criminal law and in civil law spheres, thus paving the way for efficient protection of the rights of juridical persons before the courts while lightening the burden on the courts of the duties that do not constitute adjudication (of cases) in the narrow sense (of the word).

173. Since the Republic of Serbia Constitution introduced for the first time to the legal order of the Republic of Serbia the constitutional complaint as a distinctive legal remedy, the Constitutional Court has started to rule on constitutional complaints, upon adoption of its Rules of Procedure in February 2008. The Constitutional complaint is filed with the Constitutional Court of Serbia and may be lodged against any individual enactments or activities of the administrative bodies or organisations, which have been entrusted with public powers, by which human or minority rights and liberties guaranteed by the

Constitution have been infringed upon or denied, if other legal remedies for their protection have been exhausted or not stipulated (art. 170).

174. The new CPC contains provisions defining the Principles on Advice on the rights (art. 8); prohibition of torture, inhuman treatment and extortion (art. 9); and trial in the presence of the defendant (art. 13). These provisions also existed earlier on but are now given more clearly and with a better layout. More comprehensive protection of rights and liberties of the arrested person is provided for by articles 69 and 68. In addition, in order to enhance the defendant's protection, some redefinitions were made of the conditions for ordering detention. Thus, article 211, paragraph 1, sub-paragraph 3 stipulates that detention may be imposed against a person in relation to whom there are grounds for suspicion that he has committed a criminal offence if special circumstances point that in a short time he will repeat the criminal offence, or finish off the attempted crime or perpetrate the criminal offence he is threatening (to commit).

175. A very important novelty is that the judge for enforcement of penal sanctions is (to be) introduced. This is a specialist judge who constitutes a model of court oversight in relation to the persons who are in detention. This is in tune with article 6 of the Charter of Fundamental Rights in the European Union, because the mentioned judge will, in addition to convicts, also take care of the status of detainees.

176. The existing term "rehabilitation" is being abandoned and clearer rights of the person deprived of liberty without (good) reason or (of one) convicted for a criminal offence are introduced. For that purpose, the person has rights on three grounds: 1) to implement his right to award of damages; 2) to implement his right to a moral redress; 3) to implement the right to recognition of his years of service or period of pensionable service.

42. Information on new political, administrative and other measures taken to promote and protect human rights on the national level

177. Numerous campaigns, strategies and action plans are implemented in the Republic of Serbia for human rights promotion and protection such as: Strategy for fight against human trafficking, with an Action Plan for its implementation; Strategy for reintegration of persons returning under Readmission Agreements (2009); Strategy to resist illegal migration in Republic of Serbia for the period 2009-2014; Strategy to resist illegal migration in the Republic of Serbia for the period 2009-2014; Integrated border management strategy; National Strategy for prevention and protection of children from violence with an Action Plan for its implementation; National Strategy for advancement of women and promotion of gender equality and the Action Plan for its implementation; Strategy for Improvement of the Status of Roma in the Republic of Serbia and the Action Plan for its implementation.

43. Information on measures and activities undertaken in order to implement the Convention and the Committee recommendations since the consideration of the previous periodic report

178. The Republic of Serbia Government adopted the draft law for protection of mentally challenged persons. In the drafting process, the Ministry of Health conducted a comprehensive public debate. The National Assembly is expected to pass the Bill for protection of mentally challenged persons in the first half of 2013. This Law, among other

things, also regulates the following important issues: promotion of rights of mentally challenged persons; defining health care institutions for treatment of mentally challenged persons and/or establishing organisational units to perform mental health care duties; defining an individual(ised) treatment plan for mentally challenged persons; voluntary placement of mentally challenged persons in a psychiatric institution; reasons for keeping (in custody) and for non-voluntary placement in a psychiatric institution; discharge from the psychiatric institution; rights and duties of mentally challenged persons in the psychiatric institution; use of physical restraint and isolation; special forms of treatment for mentally challenged persons; as well as introducing a penal policy for violation of particular provisions of this Law. Further, it was agreed that the types and more detailed requirements for setting up organisational units within a health care institution engaged in treatment of mentally challenged persons and for performing mental health care duties as well as more detailed requirements that psychiatric institutions must fulfil for use of physical restraint and isolation, will be laid down by the Minister in charge of health affairs within 12 months as of the date of entry into force of this Law. The Republic Expert mental health commission is already in the process of developing the drafts of the rulebooks mentioned above.

179. In line with the "Strategy for development of mental health care", by developing the internal organisation of health care institutions, it is envisaged that hospital capacities at secondary and tertiary health care levels will be reduced, or that these capacities will be made to serve other purposes. In keeping with the Regulation on the plan for a network of health care institutions, the number of beds for psychiatry in all health care institutions in the Republic totals 5,300 (for short-term in-patient treatment – 2,100 beds; (for) extended treatment and long-lasting in-patient treatment – 3,250 beds). Of the number of beds that are used for hospital treatment of persons with psychiatric diseases (...) namely up to 3,250 hospital beds, 1,550 beds will be used for care and treatment of psychotic disorders in the acute stages, addiction diseases, for forensic psychiatry, psycho-geriatrics and psycho-social rehabilitation, and up to 1,750 beds for in-patient treatment of persons suffering from chronic psychiatric diseases. These capacities will continue to be reduced in the period ahead, by 10 % on average, with development of community mental health care. The positive practice of involving the beneficiaries in the Patients' Council is pursued in all specialised hospitals for psychiatric diseases.

180. The new Social welfare law, passed in April 2011, introduces new beneficiary groups insufficiently represented to date in social welfare practices, such as victims of domestic violence, abuse, neglect and self-neglect as well as of trafficking in human beings.

181. Article 40 of the Law lays out groups of services which are broken up into the following groups:

1. *Assessment and planning services* – assessment of status, needs, strengths and risks of beneficiaries and other important persons in their setting; assessment of the guardian, foster carer and adoptive parent; development of an individual(ised) or family plan of service delivery and judicial protection measures and of other assessments and plans;

2. *Day community services* – day care (centers); domestic help; hostels; and other services supporting the stay of beneficiaries in the family or in their immediate environment;

3. *Support services for an independent life* – housing with support; personal assistance; training for an independent life and other types of support essential for active participation of beneficiaries in society;

4. *Advisory-therapeutic and social-educational services* – intensive support services to the family in crisis; counselling and support of parents, foster

carers and adoptive parents; support to the family giving care to its child or to an adult family member with development difficulties; maintaining family relations and family reunion; counselling and support cases of violence; family therapy; mediation; SOS helplines; activation and other advisory and educational services and activities;

5. *Placement services* – placement with the family of relatives, foster caregivers or in another family for adults and senior citizens; placement in hospices; placement in an emergency reception center and in other types of accommodation.

182. Pursuant to article 56 of the Law social welfare services may be delivered in the form of emergency interventions to ensure safety in situations posing a threat to life, limb and development of beneficiaries and are provided 24 hours a day. Emergency intervention services are provided by the SWC but subject to mandatory cooperation with other competent authorities and services. Emergency intervention services are provided by the Republic of Serbia and/or the autonomous province.

183. Article 81 of the Law stipulates who may be entitled to a cash social welfare benefit or, in other words, who is to be regarded as family member for the purposes of this article. However, paragraph 5 of this article specifies that, by way of exception, a perpetrator of domestic violence may not be regarded as family member; namely, his emoluments and assets do not affect the entitlement of the victims of domestic violence to cash benefits if they fulfil other requirements provided for under this Law.

184. The Social welfare law introduced the accreditation procedure for training programs for professional officers and service providers as well as a licensing system for professionals and authorised service providers in the social welfare sector. The role of social welfare inspection was enhanced and defined in more detail, all of which helps build up the regulatory mechanisms which will lead to attainment of and sustained quality of the services delivered in the social welfare sector. Considering that this Law also introduced service standardisation for beneficiaries; a new method of record and document keeping on beneficiaries and on the services delivered, paying attention to confidentiality and personal data protection, it can be concluded that it will upgrade beneficiaries' rights protection including, in particular, (the protection of) the rights of children victims of all forms of violence.

185. Social welfare services on the local level are established and financed from the funds of local self-governments. Thus, for instance, day care service makes it possible for children with disabilities to remain in their family and meet their needs in the setting where they live, in their natural environment. As part of this service structured activities are provided within a defined program concept aimed at practical skills development for everyday life, which enable self-sufficiency to the largest extent possible, and development and their sustained social, cognitive and physical functions, all with a view to creating prerequisites for their integration into community life. This service provides beneficiaries with a positive and constructive experience of stay outside their family.

186. The *Rulebook on assessment of additional educational, health and social support to the child and school-child*[44] was adopted in September 2010. This Rulebook replaced the old Rulebook on categorisation of children. In addition to this Rulebook, a *Guide for parents of children in need of additional support in the fields of education, social welfare and health care* was developed along with the *Manual for work of the inter-departmental needs assessment commission for delivery of additional educational, health care or social*

[44] "Official Gazette of the RS", No. 63/2010.

support to the child and pupil. The point about this Rulebook is that, unlike the previous one, it enables monitoring of the child's needs, support delivery in its future social life and points to the largest extent possible to its leftover capacities.

187. The Ombudsman's Office is responsible for following up on exercise of human rights in residential institutions for children, young people, adults and senior citizens with disabilities and during 2009 and 2010 it monitored the activities of residential institutions for persons with disabilities and hospices in the social welfare system.

188. In 2009 the Inspection and Monitoring Division of the Ministry of Labour and Social Policy performed a total of 73 monitorings (extraordinary, regular and oversight). In 2010 104 monitorings were carried out, of which there were 9 continued inspection monitorings in order to oversee treatment at the Adults Residential Center Kulina (from 28 October-3 December 2010), which was prompted by an incident in that institution. In 2011 a total of 87 inspection monitorings were performed.

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Second periodic reports of States parties due in 1999

Serbia

[3 May 2006]

Corrigendum

Document CAT/C/SRB/2, dated 8 February 2007, is hereby withdrawn.

For the initial report of Serbia, see CAT/C/SRB/1.

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